

M I N U T E S
PLANNING COMMITTEE WORKSHOP
MARCH 16, 2010

A workshop of the Planning Committee of the Council of the County of Kaua'i, State of Hawai'i, was called to order by Councilmember Jay Furfaro, Chair, at the Historic Building, Room 201, Līhu'e, Kaua'i, on Wednesday, March 16, 2010 at 9:12 a.m., after which following members answered the call of the roll:

Honorable Tim Bynum
Honorable Jay Furfaro
Honorable Daryl Kaneshiro
Honorable Lani Kawahara
Honorable Derek Kawakami (present at 9:28 a.m.)
Honorable Dickie Chang (ex-officio member)

RECUSED: Honorable Bill "Kaipo" Asing (ex-officio member)

The Committed proceeded on its workshop on the following bills as follows:

Bill No. 2022

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8 OF THE KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO THE COMPREHENSIVE ZONING ORDINANCE

BILL NO. 2023

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 10 OF THE KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO SPECIAL DEVELOPMENT PLAN

BILL NO. 2339

A BILL FOR AN ORDINANCE AMENDING ARTICLE 8 OF CHAPTER 8 OF THE KAUA'I COUNTY CODE 1987, AS AMENDED, RELATING TO DEVELOPMENT STANDARDS IN THE OPEN DISTRICT

Mr. Furfaro: Aloha, good morning everyone. Thank you for being here to attend this special workshop of the planning committee. I do want to just revisit the purpose of this workshop. We have had over the period of the development of the general plan several opportunities to look at particular pieces of our zoning ordinances that could in fact be addressed according to the citizens'

feedback that we got in the 2000 general plan. Those parts included somehow phasing out of the ADUs on agricultural land. This was something that was portrayed as a need by the citizens advisory committee; it was in the general plan. We have subsequently have in a separate bill that addresses the exit strategy for ADUs on agricultural land by having people declare their intent. We also had a collaboration from the then planning director, Dee Crowell, which referenced two bills. They were bills 2022 and 2023. Those bills took on not only the ADU, but also opportunities to look at density in open space areas, and also looking at the smart growth technique at the time to allow bonus pieces...bonus intentions for property that would cluster on agricultural land. But subsequently, the mayor's administration, and we have Mr. Imai Aiu with us, has introduced a new bill, bill 2339, and I'm asking that we start today's meeting with a presentation from the administration. This bill was introduced to my committee by request through Mr. Bynum, and I'm asking that he would make a comparison on bill 2339 as it relates to the opportunities we had in bill 2022 and 2023. And subsequent committee meetings, we can either decide to finally receive bills 2022 and 2023, and move forward on the open space density, as well as the address that we've already done on ADUs on ag land if that becomes the committee's choice. But that has been sitting there for about seven years now kind of just deferred, and that could be one of the outcomes today. We are scheduled from 9 o'clock until 12; I don't believe that we will use all of that time. We have with us Mr. Imai Aiu at the podium now. We also have the former planning director and his trusted assistant Keith Nitta, and Dee Crowell, present with us today. So again, the intent is just to air out the pros and cons of which bill, which direction, and methodically try and complete some of the goals that were in the general plan. So on that note, Mr. Aiu, I am going to give you the floor. I am going to move across the way so I'm not blocking the view here, and the rules are suspended and you have the floor for your presentation.

IMAI AIU, Deputy Planning Director: Thank you Chair Furfaro and members of the Planning Committee. Various...simply I'll just start diving right into it, the comparison between the two bills that we have proposed and the former one proposed back when...back by director Crowell. So to start it off basically here, it's just the basic table comparison of the measures each of the bill...each bill addresses and the current standards. So to just kind of go through these quickly line by line is, you know, first in agricultural density is...and setting a cap on it, currently we have a cap of five units. The proposed bill...

Mr. Furfaro: Excuse me Mr. Imai. Is there a possibility that you have a PowerPoint print of this?

Mr. Aiu: Yeah. Actually, it was sent over.

Mr. Furfaro: Can you print it out for the members? If you could, I'd appreciate it.

Mr. Aiu: Just kind of... I'm sorry. I should just kind of begin with kind of a general statement of comparing the two bills. The bill 2039 proposed by this administration addresses basically density and subdivision standards on open space and the treatment of ag...of agricultural land and open zoned land cohesively when determining subdivision standards. Those are the basic three things of the bill we have proposed does.

The bill propose...2022 is much broader. It addressed agriculture subdivision standards, changed basically (inaudible) those standards, introduced clustering, introduced a new permit procedures for large agricultural subdivisions, added a few definitions on uses and allowable uses on the agricultural district, and introduced a project development into the agriculture district. Did I miss anything? I'm going to ask the guys who know it better than me. So if we're going to go through this, you're going to find that a lot of agriculture in this agriculture zoning in our...the current bill proposed remains the same, but you will find a lot of changes in bill 2022.

So the first thing is, again starting back to where I was, is the cap on agriculture land. Right now we have a five-unit cap. The current bill does not change that; it stays with the five-unit cap. Bill 2022 brings that down to one unit and that actually becomes very important in how the subdivision works after that, so it is become more restrictive. There is, like I said, no change in the agricultural subdivision standards in our current bill. They do become more restrictive in...under bill 2022. The subdivision permit standards, right now you go through the subdivision committee if you want an agricultural subdivision of the...you go through the basically the subcommittee of the planning commission. Change in 2022 is that if you are going for more than 300 acres, you now have to get a class four permit. There are changes to the agricultural definitions in 2022. It adds in the agriculture activity as part of the definitions, and it adds in definitions of a farm and a farm dwelling. Our current bill, like I said, does not touch the agriculture zone lands in as much as there are no changes in there. Next.

Again, now talking about uses in those definitions, there clarifies what a single family...how you can...where a single family dwelling is allowed, and this kind of references, again, the 1976 date that you...a single family dwelling unit is allowed on lots prior to 1976. It does allow project development in the agricultural zone. It does say it has to be aligned with the general plan. It does...and the bill does have a clustering mechanism...2022. Again, the current bill, like I said, does not touch the agriculture standards, so these would remain as...the same as they are currently.

Now we get into what happens in the open zone standards. In the open zone, the current bill does address the open zone. That was the intent of the current

bill—was to address density and subdivision in the open zone. So you see that the subdivision standards actually become fairly similar (inaudible) by both bills... (oh, what happened... and then everything goes blank and we don't get to do anything after that anymore... Somebody fire the computer back up for me if you could. Thank you.) There is a open density cap proposed in each bill. The bill 2022, the former bill, caps it at one unit; the current bill proposed caps it at five units similar to the current agriculture subdivision standards. The subdi... sorry, the agriculture density standards.

The open subdivision, the current standards is basically you have a five-acre lot minimum up to however many lots you can get by carving it up into five acres. The bill as proposed, the 2022, stays at the five-acre minimum, but puts a 10-unit cap... 10-lot cap on it. The bill that (2039) that we proposed that's on the table now is... also maintains the five-acre minimum, but really runs it basically equivalent to the current agricultural standards. And then both of these bills say that when you have agriculture and open zoned land, when it's greater than 30 acres, you will consider them together.

Couple things I want to go into detail on is basically the subdivision standards and what they're going to look like as under each of these scenarios. So currently, if we look at a... This is I believe a 10-acre parcel. There really isn't much change, and they're... again, 2039 doesn't propose any changes. Our current standards, you could subdivide it to 10 lots. Under the proposed 2022 bill, you can subdivide into 10 lots... really no change.

On a 14-acre lot, on our current bill... I mean our current standards, you can subdivide into four one-acre lots, and then the rest just have to be two acres. That does change under 2022 in which you can have... I believe that's eight one-acre lots, and then the remnants you can just subdivide into two lots.

We get up into larger lots here, this is a 25-acre lot. Under our current standards, you can again get four one-acre lots, and then the rest of the lots, I believe, have to be... I think it's... you're at a three-acre minimum on the lots. The proposed bill 2022 subdivides it into... I'll see if I can read the standards here... Basically you just... it's a 10 lot... you can subdivide into 10 lots. That's right, right? One of the things that should be noted here is that the density cap comes into play. When the density cap is changed to one, as in this proposed bill, basically what you don't... what doesn't happen anymore is what happens under the current standards. If you look up at this... This is a maximum lot configuration that I could get out of 25 acres; however, it's not a maximum density configuration. There is a sliding scale basically that happens with ag land where your first acre gets you one unit, every acre subsequent gets... every three acre subsequent gets you another unit. So if I subdivide here into four-acre parcels, or three-acre parcels, I get one unit. However, if I make less lots but I make them five acres, I get two units on that lot.

So in this configuration here, I get 14 units. In this one over here, I get 11. Less lots, but more units, and as you know CPR enables you to sell off those pieces. So it's very important to realize that the density cap does come into play here on how you configure your lots and how someone is likely to configure their lots based on the density.

This is now...if we look at a 50-acre agriculture piece, this is where clustering starts coming into play. These are our current standards basically. You can subdivide into 10 lots no smaller than five acres. Each of them will get you two units. Under proposed bill...under bill 2022, you can still do that same number of lots and you have the option of clustering here, where you can take this area, there is a minimum cluster size for every...for a range of lots in a table where you have basically an area that you can cluster of a max size, and a max number of lots you can put in, and then there's a remnant piece and you can have a maximum number of remnant lots that also can be of a...that have to be a minimum size. Now if you notice, the way I kind of subdivided this intentionally is smaller lots and larger lots, because the density again doesn't come into play. I don't gain anything by making a lot bigger; I'm only going to get one. So a market practice is going to play a lot on how a lot is subdivided on how much of an acreage you think you can sell for how much. I mean...I won't pretend to be a market expert, but it's basically just speaks to common sense that, you know, one house on five acres is probably going to have a lot more appeal than maybe one house on 50 acres just because of who can afford that and the reach and the marketability of that.

As you start getting into again larger and larger lots, here's a 200-acre piece, and it can be subdivided basically like this, max of 10. You can get five lots on each (inaudible). Twenty-acre parcels, that's 50 units, both under the current standards and the proposed 2039, because again, it doesn't touch it. At this size you are required now to do clustering under bill 2022. This is a required clustering where you can get, again referencing the table, you can get eight cluster lots and then two remnant lots. That configuration does indeed look a lot better than this if you want to talk about preserving large tracts of land and basically limiting development to a small area. Then this is the bonus cluster here. Again, you get more units out of this. This is now 30 units. This is your cluster area, this is your remnant that you can divide into six pieces. Again, even with the clustering here, note that the 30 units, you're still getting less than the current standards. It should be noted too at this point that these density numbers, unlike the original bill, because of the time it was written, did not include ADUs. ADUs are no longer a possibility on any of these lots. When the bill was written, this configuration could have gone up to 60.

Mr. Furfaro: Yeah, I think the council recognizes the sequence. We had to address the ADUs first.

Mr. Aiu: And then we finally get into our really large subdivisions. This is where actually probably our ag standards perform best, because it does encourage somewhat of a...you know, a clustering of sorts, basically. If you have a really large piece, this is where you come into the standards of you can divide 75 acres first no smaller than five acres (that's your tight bunch down here), then you divide twenty percent of the lot or 300 acres, whichever is less, into your five units here, and then you have to leave the rest of the piece alone. Each of those is entitled to five units. That comes out to 65 units on what was to be a 900-acre parcel.

(Mr. Kawakami was noted present at 9:28 a.m.)

This is now what is proposed under bill 2022. This is your required cluster here. This is your bonus clustering here. If I could get the numbers on those; I do have them written down. I believe that comes out to, even on your bonus cluster, you're coming out to 48 units on this, as opposed to... What we have now with our pretty good standards, you get 65 units on that. You will notice though that under the cluster, you do get...you can get smaller remnant parcels, as opposed to here where you have this very large remnant parcel left. However, again consider that there is, now that there's only a one unit cap, a one density cap on ag land, there is kind of no point in trying to gain that system to get up to the five units, and you could subdivide it like this—cluster out your bonus here, do a bunch of lots in your minimum size here, the rest of your remnants, and leave one large remnant lot. That is a possibility. That's also a possibility here. You can divide up to 20 percent of the land, but you're probably still going to want to, you know, again, if you're doing subdividing from as much market as you can get out of it, you're probably going to want to get those five units at least. In this case, you're only going to get one unit no matter what. So this situation becomes more likely under this bill. It's not mandatory, again, but it becomes more likely. I won't try to honestly guess at how the market forces will dictate this, but it at least becomes more possible and takes away that bonus.

Now we come into probably a more meaningful comparison between the two bills is the open subdivision. Again, are your 50 acre lot, your five-acre minimum comes into play on both bills, and the 10 unit cap, it's basically effective on either of them, although the 10 unit cap is explicit on bill 2022. If you're going to larger lots here, you know you're starting to talk in your 200 acres, this is your density that you can get off of it today—40 units, and you can subdivide into 40 lots. The current bill basically imposes a cap of 10; when it mirrors the agriculture standards, there is a cap of 10, and you get your density, again four per lot, you're probably going to get...you can get 40 units out of it. Bill 2022, again 10 unit cap, but one unit per. So you get a lot less density out of bill 2022. And again, here's where both bill 2039 and bill 2022 start to make a lot of difference in the ag subdivision when you're talking about open subdivisions. Nine hundred acre parcel, 180 units. You can

subdivide it today currently into 185 acre lots. If we pass bill 2039, it starts to look a lot more like ag—65 units, a lot more remnant parcels. Bill 2022, the 10-unit cap with one density with one unit max comes into play. Ten lots. You can configure them really down to five acres if you want to, but I just divided these equally into 90-acre lots, one per, 10 units...down from 180. Sixty-five units down from 180. And that basically is how the two bills compare out. So if you have any questions, I know that's a lot of mechanics and just numbers. Hopefully the graphics helped.

Mr. Furfaro: Thank you. Thank you Imai. Thank you very much. Before we go to any other presentation, let me see if there's any questions as it really relates to Imai's administrative bill. I would prefer that Dee might make his presentation, and then we get to look at his particular pieces. So are there any questions about the proposal from the administration as presented today? Mr. Bynum, go right ahead.

Mr. Bynum: On your 2022 class work or greater than 300 acres, but under 300 acres remains a subdivision?

Mr. Aiu: That is my understanding, yes, but I would confirm that. That's right, right?

Mr. Furfaro: Again, let me let Mr. Crowell answer that question.

Mr. Aiu: Yeah, I would prefer that.

Mr. Furfaro: I would prefer that as the committee chairman, and I'll state it again. You can direct questions to Imai about Imai's bill.

Mr. Bynum: Thank you.

Mr. Furfaro: Please stay present. Mr. Crowell, sounds like we'll have questions about your presentation when you're complete. Mr. Crowell, may I ask you, since you were planning director at the time that the general plan was...could you first give us kind of a overall philosophy as it relates to what was trying to be accomplished in the earlier bills 2202(sic), 2203(sic), as it relates to the goals in the general plan.

DEE CROWELL: I can do that, it's part of my presentation.

Mr. Furfaro: Thank you.

Mr. Crowell: Mahalo for allowing me to present this bill. I was asked to present these bills by Councilmember Furfaro. You know, just when I thought it was safe to go out in public again, this thing comes out of its coma and

raises its ugly head. Okay, got it. For the record, nobody ever told me that they actually liked these bills, so I don't know why it's coming up. A few said they understood it, but nobody said they liked it. So these bills were introduced as I said eight years ago. It was so long ago I had to hunt for this binder with my notes in it, and actually, as you can see, all my files are on floppy disks, so I had to go find a computer that could...that had a floppy disk drive and a USB2 drive, which wasn't easy. So these bills were drafted, as Councilmember Furfaro said, in response to the general plan and some of the issues raised in the general plan. One was the preservation of at least potential ag use. You know, it was realized back then there's more farmland than farmers, so...but you know, some day that may change if the situation becomes more favorable. There's some quirky things that happened with the existing subdivision formula. There's a...you know, if somebody develops a subdivision and wants to...and builds the roads and the water systems and all of that to county standards, by law the county...if they offer it to the county, the county has to accept it. So in ag subdivisions, there are, you know, miles and miles of roads serving very few houses, so the issue of density becomes, you know, how many homes per mile are you serving, and in ag subdivisions they become very few.

Preservation of open space was a very important issue. That's what residents and visitors alike value about Kaua'i. The open zone density bonus, I think Imai covered that really well and explained it really well. Advent of CPRs, it was just becoming...people were just realizing what CPRs meant and its applications to ag lands. And in competition with urban development, it's way easier to develop an ag subdivision than it is to rezone something. And I just show this chart to remind you, and I think Imai covered it, that there are two things with development. One is the allowable lots, and the other is allowable number of farm dwellings you allowed to put on each lot. And this is one of the quirks of the CZO code. If you have a 20-acre lot, you're allowed to subdivide into 12 lots, but if you have a 21-acre lot, you're only allowed to subdivide into 9 lots. So you know, that kind of quirk makes this...

So the intent of bills 20... To reduce residential potential, preserve ag lands for present and future use, and preserve open space, provide flexibility and site design simplifies CZO provisions. Now before I go any further, you know, the CZO provisions right now in the ag and open district are still some of the toughest in the State, so it's not like it's a free for all out there, it's... With the one-time subdivision limitation and the contiguous lot provisions, Kaua'i has really strict ag standards for subdivisions. So I think the best way to explain the bill is to go through some examples. I have an example here of a 300-acre lot and it shows you what...well, I am comparing basically the CZO as it exists now and the other bills. I think I make no comparison with 2339, the bill currently in front of you, because it's...I don't understand it that well.

So on Kaua'i, if we have a 300 acre lot, most large lots are about half and half—half ag, half open. And this is a State land use district, so a 300-acre lot

would be about 150 acres of ag and 150 acres of open. CZO development potential on a 300 acre lot without subdivision, and as Imai pointed out, five lots in the ag...I mean five farm dwelling units in the ag and 30 farm dwellings in the open, and this is, as I said, without subdivision. Potential development with subdivision, agriculture you can get up to 50 dwelling units on 10 lots, and on the open you can get 30 farm dwellings on 30 lots, or a total of 80 on a 300-acre lot.

Now taking a look at the old bill, you go to the 300-acre cut of row and the first set of (inaudible) that requires cluster and the second one is a bonus cluster, so I'll show you that. Required cluster on a 300-acre lot, 10 lots, 2 farm dwellings per lot, and you're required to have 8 lots occur on 50 acres. Again, this takes into account that there were ADUs that were allowed in the ag and open district, so a total of 20 farm dwellings. Bonus cluster, you can have 30 lots, but now it's one farm dwelling per lot, and you're required to put 24 lots on 50 acres, and you have the flexibility of 6 remnant lots to design more flexibly, so a total of 30 farm dwellings. So in comparison, 30 farm dwellings possible under the bills, and 80 farm dwellings possible with the CZO currently.

Mr. Furfaro: Excuse me Mr. Crowell, I think right at this point there is someone that has a question from the council. Councilwoman Kawahara?

Ms. Kawahara: Forgive me if it's too simplistic, but...so when they're clustered or any of those lots... Excuse me if this is too simplistic, but I want to be sure I understand. So any of those dots in ag land, they're supposed to be farming.

Mr. Crowell: Yeah.

Ms. Kawahara: Okay, thank you.

Mr. Furfaro: Hold on. Mr. Bynum.

Mr. Bynum: In these examples, Dee, you said that includes ADU.

Mr. Crowell: Well this took into account ADU, but when you go to this concept of bonus clustering, the idea is you wouldn't be allowed an ADU.

Mr. Bynum: I see, so this is... Even with the ADU gone, this is what we would end up, say we pass these bills today.

Mr. Crowell: Yeah.

Mr. Bynum: Okay, thank you.

Mr. Crowell: Well, so this couldn't happen with...you know, because it would be considered...because it's one farm dwelling per lot, you wouldn't be having an ADU.

Mr. Bynum: So the total density would be 20 farm lots, as opposed to 30.

Mr. Crowell: Would be 10.

Mr. Bynum: Ten.

Mr. Crowell: Under the required cluster. So you know, if I did it today, I would just throw out this required cluster column, because...

Mr. Bynum: Just go with the bonus.

Mr. Crowell: Yeah.

Mr. Bynum: Because that's a key question—if I did it today.

Mr. Furfaro: Well, let me go back here. But if you attempted...the intent was to phase out ADUs, but the only...you could only take advantage of the cluster bonus by eliminating getting any ADU.

Mr. Crowell: Right.

Mr. Furfaro: That was the concept. Thank you Dee.

Mr. Bynum: Thank you.

Mr. Crowell: Well, back in those days the ADUs in ag and open were always extended like at three-year increments, and then finally about two years ago it kind of ended. So...but this is... I was asked to explain this bill. So example 2 is house and acre lot. Again, half in ag, half open. CZO development potential without subdivision—five farm dwellings in the ag and 100 farm dwellings in the open on the thousand acre lot with 500 acres of open, so 155 farm dwellings. At this point I got to say that in the north shore planning area and the Kalāheo-Kōloa-Po'ipū area, the density in the open zone is limited to 10. So...but when you subdivide a thousand acre parcel, you get...in the ag, if you're allowed 15 lots, 55 farm dwellings. In the open, 100 lots and 100 farm dwellings. So in... But the thing is, in the northshore and Kalāheo-Kōloa-Po'ipū area, this would be limited to 10 lots, but you could still get 100 farm dwellings.

Mr. Bynum:

So it didn't really matter with CPRs.

Mr. Crowell:

Yeah, CPRs are kind of...yeah. Going to the table, we find that your thousand acre area...look down the row, you have the required cluster and the bonus cluster provisions. How that works, under that table you're allowed 17 lots, two farm dwellings per lot, again, cluster 14 lots on 180 acres, so total of 34 farm dwellings. Bonus cluster, you're allowed 51 lots, one farm dwelling per lot, and clustering 46 lots on 95 acres. So it's more lots on smaller acreage, for a total of 51 farm dwellings. So again, in comparison, 51 farm dwellings versus 155 farm dwellings...that was kind of the idea behind this bill.

Other features, best thing, allow people time to, you know, complete whatever they had in the pipeline. Definition of agriculture and farm dwelling... When I was in the planning department, it bothered me that with farm dwelling requirement is in HRS 205, so it's a State law, not a county law. So we ended up having to enforce State law, which is... County doesn't like to enforce State law, and State doesn't like to enforce county laws...as we found out in the boating situation.

Project development use permits. I'm not so sure that I'm too crazy about this provision right now. I think the idea behind it was to allow deviation from standards in order to achieve a more flexible site design, but as I was told, you know, the... Intervention could occur on the subdivision and that would never end; you'd never get...that's the way to really stop a subdivision is to intervene, because you don't know when you are finally done.

Elimination of the formulas. As I said, there were quirky provisions in the existing CZO, and to just go to the chart would be easier, and now with the elimination of ADUs, you could, you know, you don't even have to go to bonus cluster, just the required cluster. The rationale behind the development was a cap on maximum dwelling units. If 15 acres is...if you wanted to rezone 15 acres to R-4, that's when you have to go to the land use commission, so it will be 60 lots, with ADUs on those residential lots you could get 120 units on 15 acres. So 120 units should be the max in the ag district, and I kind of interpolated the...that's how I interpolate the formula. And the exemption of ag leases from the one-time subdivision, you know, the bill, I think, hopefully one of the outcomes of the bill was to reduce the density and the...in some of the bigger lots so that it would...reduces the development potential and therefore reduce the price of the land, make land more affordable for agriculture. And you know, some of those properties may be too big for one farmer, you know, once we get into big lots, so technically all ag leases should go through the subdivision process, but it was an exemption from the ag leases.

So what's changed in the last nine years? We've had more ag subdivisions, so I don't know how many properties are out there right now that could actually be subdivided. As I said, sunset of the ADUs in ag and open zones, important ag lands study under way, and that may or may not affect how, you know, we perceive development on important ag lands. There's more diversified ag now that may want to look for smaller and smaller pieces of land to farm. We've got this bill 2339. It addresses density in the open district, and you know, that...to me, if there was one thing that's really crazy in the CZO, it's this density in the open district where you can develop...the potential is there to develop way more than you can in the ag district, which...and the open district is our, you know, high slope areas, flood zones...you don't want to be developing in there, and it's very hard to develop, you know, you'd really be cutting up the land to put in roads and utilities.

So I show this. This is also in the bill. This is an alternate one table, which is behind the existing table. The idea was to keep the existing density, and that would be five on each lot, and so that would reduce the nonconforming density that would be created by the one house per lot, and have only one remnant lot. Again, keep the lot small enough to... Well, it says two farm dwellings for each lot, but then you could go to one farm dwelling for each lot, so it'll be four-acre max, which is still kind of a big lot, you know. If you had to...if the county had to service those roads and waterlines, four acres is still a big lot. Here, bonuses may be allowed for further clustering at one farm dwelling per lot. So again, the idea was to reduce residential potential, preserve ag lands, preserve open space, provide some flexibility in designing a subdivision, and simplify the CZO provisions. Okay, that's it.

Mr. Furfaro: Thank you Mr. Crowell, and I'm going to ask councilmembers if they have any additional questions, and then I'm certainly looking forward to some comments from Mr. Nitta, who's joined us today, next. Are there any questions on Mr. Crowell's presentation? Mr. Bynum.

Mr. Bynum: Thank you. Thank you very much Dee. I appreciate it a lot. I read these bills when I first came on council, and I read them again recently. It took some study, but eventually I was able to get the concept pretty clearly in my mind. The bills added definitions, as you mentioned, from 205. Did that...wouldn't that have any real effect on county, or would it just be inconsistent with, you know, putting those definitions that we pulled from State law?

Mr. Crowell: So the idea was we'd be enforcing a county law, not a State law.

Mr. Bynum: Because basically we have not enforced the farm dwelling agreements. Is that a correct statement?

Mr. Crowell: I don't know if I want to go down that road, but it's really hard to enforce...I mean especially if you got a retired farmer. What do you tell a retired farmer that's not farming anymore? You got to move off...you got to move out of your house?

Mr. Bynum: Right. But in reality, we've made no effort to enforce it in any circumstance that I'm aware of.

Mr. Crowell: Well, because...what do you do, you know. If you enforce on one, you have to enforce on everybody. If they're not farming, they're not farming.

Mr. Bynum: If this law, had it passed, would have included an expectation that the use of any lot created was for agriculture. Is that correct?

Mr. Crowell: Right.

Mr. Bynum: So it didn't say it's okay to develop ag land into residential. It said if you're going to develop this agricultural land, here are the standards.

Mr. Crowell: Well, you know, when I took a look at this again, like in the last couple weeks, you know, the idea that, you know, you could cluster houses in a smaller area and preserve large tracts of land for agriculture and large tracts of land for, you know, preservation of open space, that to me is worth something. I don't know, you know, so it's... If this thing goes forward, you might want to think about how, you know, what would be required of a guy who bought a one and a half acre lot in a thousand acre subdivision, and you know, in a thousand acre lot, the big development occurs in only 95 acres, so it's less than 10 percent. Does chasing after these guys to do ag make sense?

Mr. Bynum: No, I think that's a wise comment. I just have a statement, which is...and then see if you agree with it, that you were the planning director at the time, the general plan was very clear about serious concerns about what was occurring on agricultural lands, and you did your job as a planning director and brought forward a proposal to address those concerns, and I very much appreciate and admire that.

Mr. Crowell: Thank you.

Mr. Bynum: I mean looking at these, Kaua'i would be very different today had this bill passed. We still may have lots of properties on agriculture land, but they would look more like the top and less like the bottom.

And you know, I also want to point out that the planning department under your leadership was opposed to ADUs on ag land from the very beginning, and opposed to every ongoing effort that was going to extend it. That was consistent with the vision that the people of Kaua'i had put forward, you know, in my last... Do you agree with my comments thus far?

Mr. Crowell: Well, I wasn't the only director that opposed ADUs.

Mr. Bynum: Right. No it wasn't. Every director, whether it was you or any other director, was opposed to ADUs on ag land, because it's inconsistent with, you know, planning 101.

Mr. Crowell: Well, and you know, especially in the open district, if you're going to put ADUs here, that really would be tough. But in reality, it's tough...would be tough to get this kind of development in the open zone, one per five acres. That's really tough, just physically tough.

Mr. Bynum: Well, the way it has worked, and correct me if I'm wrong, the open density bonus added to the amount of dwellings that were allowed, but they weren't necessarily all placed on the open zoned land. They took the parcel that had dual zoning, and the developer in essence decided where to put the lots and where to put the roads and...

Mr. Crowell: Yeah, because the CZO allows you to transfer some density into the adjacent zoning district. That's correct.

Mr. Bynum: Right. So based on you being keenly aware of where Kaua'i is now and the bills that are before us, what would be your recommendation in terms of the two bills, or at least this one. Should we consider passing this bill with modifications that you mentioned as an instance...

Mr. Furfaro: Excuse me just a minute Mr. Bynum. I think... I want to say that that is the question that's before the whole council, but before Mr. Crowell answers that, I think we're...the choices here are this bill which addressed everything versus us taking approaches that bisects the problem, as we've done—take ADUs, end it with an exit strategy that people can live with, now look only at the open space, reduce density, and then do we go to this piece on the agricultural activity and look at a new bill addressing the ag portion only. And I just want to make sure that I'm understanding your question. That's the choice for this committee. Can this bill be modified to address only agricultural activity...agricultural zoned land?

Mr. Crowell: Well, all I'll say is that this bill was a, to me, a good first pass, but it's nowhere as near a finished product. A lot of tweaking has to go

on, you know, especially considering, you know, the elimination of ADUs is a big deal for these bills. So some major kind of surgery might be necessary, and you know, this bill could work in conjunction with the 2022s because one of the major objections to the bill was just wiping out all the potential density, which this bill does too, but then the 2022 going get blamed for it.

Mr. Bynum: Well, you've anticipated my next question, which is can these two bills work in conjunction with one another...

Mr. Crowell: Yeah.

Mr. Bynum: ...because the bill that's currently before us, last term by the previous mayor was seen as part of a package of bills, and that also addressed use. And so I guess you kind of answered that. 2022 could be amended to address the changes that have occurred on the ground and in the laws in the meantime and still be a mechanism that further reduced density and required clustering...if new subdivisions were to occur, whether they were ag/open or strictly ag.

Mr. Crowell: Right, because this...2022 was the first pass. In order to dovetail with 2339 would take, you know, more work and... Well, I'm not the sheriff anymore, so...you know, I have some ideas, but you know, it might be inappropriate for me to get involved with the crafting of new bills.

Mr. Bynum: I understand what you're saying, and I just close with reiterating the thank you for that work that you did then, because I think you were responding appropriately to the open...to the directions that we got from the citizens to address this issue, and Kaua'i would look very different today if we would have followed through with...and completed the work on this bill. Also, I've read the transcripts of all of the meetings that happened, and I know it was difficult for the planning director and for councilmembers, and I think it's fascinating—some of the people who testified at the time, I believe, would testify very differently today, seeing how things have happened. So I appreciate this presentation very much. Thank you very much.

Mr. Crowell: Okay, thank you.

Mr. Furfaro: Mr. Crowell, let me see if there are anymore questions from councilmembers. And again, the piece that we're left here is, as I just said, you know, we've kind of bisected the goals of the general plan addressing ADUs, eliminating that expansion or proliferation, now this open space bill, and could I just have you closing comments on what you might think a new ag bill for ag land specifically might look like?

Mr. Crowell:

Well...

Mr. Furfaro: I ask that question, Mr. Crowell, because at the moment we're redefining the opportunity. You know, you certainly have to have incentives for people to farm on ag land, and one of those incentives is the bill that's been worked on by a lot of people very interested in expanding farm operations in the farmers workforce housing, so...

Mr. Crowell: So I think I kind of alluded to it earlier. I think there might be a way to introduce some flexibility to actually drain all the density, residential density, off of the remnants to allow...again, to lower the value of those large remnants so that that land can be more affordable and actually put into productive use and kind of help the farmer actually make a profit if he doesn't have to pay a gigantic price for the land, or gigantic lease for the land, because you know, right now any property you could put on five houses. So it has some value. But if it has no residential value, maybe that would be something that government would want to do, I think, if preservation of ag land is an...and ag production is a goal, farm dwellings may be allowed. You may want to put some limits on, you know, what a farm dwelling...I mean a farm worker housing looks like, you know, maybe size limitation, I don't know, clustering, whatever amount of farm worker housing you want to put on a piece of property... But again, it would be a very complicated setup if you intend to do that. I mean you might... I wouldn't want to put it all in the ordinance. I would allow the planning department to adopt rules regarding ag subdivisions to allow them some flexibility in terms of when a landowner walks in the door, you know, and every parcel is different. So I would want to see that the planning department is able to work with a landowner to kind of find a way to best utilize the land both for potential residential use and for agriculture use.

Mr. Furfaro: Okay, I appreciate that comments. I think we have some of those concerns designed in the farm worker housing bill, so...but thank you very much. Mr. Chang, is your hand up? No? On that note, Mr. Crowell if you could stand by, we certainly would like to hear from Mr. Nitta here about the bills comparisons and the intent and the vision. Mr. Nitta, thank you for joining us.

KEITH NITTA: Good morning members of the county council and the general public. I'd like to first of all step back a bit and try to refresh your memories about the presentation I did about a month ago about the history of...background on the open zone. First of all, the open zone did have a purpose for the way it was structured in the CZO as a...I tried to explain, because you would have to step back in time, was my main point, to the early 70s when the CZO was drafted. And so the open zone, the way it's structured today, did have a purpose, and its purpose was basically density—to allow for the ag to be used for ag, and then where the...dwelling units would go into the open, and so that was my main point. And also explain to you the various interpretations of the open zone as the

department started to receive issues on open zone land. So I just wanted to first of all refresh your memories that the open zone did have a purpose.

In comparison... My point of view of both bill in comparing both, the way I look at it, Dee's bill, so-called Dee's bill is structured more for the long-term fix. I think the current bill that the planning department's proposing with the open zone is more...I would consider it more of a temporary fix. Because I think there are steps needed to the current bill that the department is proposing. The biggest concern that I have with both bills, actually, so I'm going to what I think are issues... I think it...both bills are more a reaction to treating symptoms than getting to the root of the problem, because the symptoms are basically development standards. But you have to keep in mind that the open zone and the ag zone go beyond development standards; it's a function, it's an overall function. The purpose of the ag zone is to keep ag healthy, to promote it, to do whatever you can to make ag function the best that it could economically and whatever else. The open zone also has functions as well.

Development standards and functions, to me, I think from my perspective, tend to clash, you know. But I think the challenge is to make function and development work together. But just treating the development standards alone, to me, is kind of shortsighted, but I think the overall fix will come into play as a CZO update is presented to the decision making bodies—the planning commission and the county council.

I think there are many issues out on the table that help function and development standards work. I think one is the IALs. You know, that I believe is very key to how the decision making bodies will respond to any type of bills dealing with amending the ag and open zone. The... I kind of jumping around, but let me get to Dee's bill, because I think Dee's bill has several...I mean one important key that mentioned, and which I really liked, was that this...the way that the bill deals with ag leases. Now having leased land from a large landowner for a goat operation, we're leasing about 220 acres, and it's a lot of fencing, because we put in about close to four to five miles of fencing, which is a big investment. And when you do that kind of thing, the issue becomes borrowing money. Banks will not let you money based on a license, which is how the landowners are leasing to the people who want to do ranching or farming, so you cannot get loans. I think Mr. Kaneshiro will agree with that. And so it...so it's hard to put a lot of investment in without a lease, but if you do lease land, you use up the one-time subdivision, so that's one of the things. But that's one of the things that I liked about Dee's bill.

The other thing was the 30 acres or less, you're not restricted to the sliding scale. You know, you have the flexibility of doing various lot sizes, but not making more than 10. I think that's a real important point, and I think even Imai alluded to that.

Issues with Dee's bill. As he mentioned, now at second thought that we can look back at it, the allowance of project development use permits to...I'm sorry. Using project development use permits to implement the application or the proposed subdivision I think has many issues. For one thing, I think...I say maybe Mr. Shigemoto in the audience, but he might recall too that back in the early 80s this issue did come to the council and the planning department. It involved Brewer lands in Kīlauea, and what happened was there were about 2,000 acres left to be subdivided on the mauka side of the highway. C. Brewer felt that the conventional way of doing it per CZO was very unproductive—it would lead to...not yield the best results as far as making the subdivision function. So they came up with a concept similar to clustering, what Dee's bill proposed. But what happened was that when it reached the point of where the planning department said, you know what, the only way you can implement such type of subdivision is a project development use permit, and somehow it went up to the point...it got to the point where the county council drafted a bill. But what happened was that a lot of interest was expressed by the large landowner. Suddenly Amfac was real interested in the bill, A&B and other major landowners on Kaua'i got really interested in the bill, because suddenly the restrictions of contiguous lot provisions, one-time subdivisions, are really almost unfunctional type of sliding scale for large lots, could go out the window. So the very thing that was trying to protect the agricultural...sugar at that time was now in jeopardy, because hey, you could now waive all of those restrictions and come up with a master plan for, you know, all of your properties. So essentially it broadened the scope of subdivision from just a parcel, to now large chunks of land in tens of thousands of acres. So with that concern, I believe the bill either went into coma or...I don't know what happened, but anyway, it died quietly. And I think maybe Hurricane Iwa had something to do with it as well. But the use of project development use permits, I think, I would really take a hard look at that.

The next point, and this is talking to some community people, and I really share their concern, and it's that in the north shore and on the Kōloa district, on the south side, the development plans were written to sort of shut the gates, the floodgates, for the open zone, but it didn't shut the floodgate all the way, but what it did was it restricted the open zone to the one-time subdivision, which it currently does not have, and it limits the open zone to 10 lots, but it does not restrict the density of the open zone. So technically, you could have more than five homes. But anyway, what we...on Dee's bill (I hate to call it Dee's bill, but...), under Dee's bill...

Mr. Furfaro:

We can refer to it as the old bill.

Mr. Nitta:

Oh, the old bill. Under the old bill, we...now in hindsight, I wish we didn't, but we deleted the provision for...those provisions from the south shore development plan and the north shore development plan. So if you look at it, you see, oh we're deleting that section about one-time subdivision and

the 10 lots because what would then happen is the overall bill would take precedent over that. But the big question that that whole process raises is whether...does the development plan provision, does it produce a better product than what the old bill proposes? I mean it's a question. I think you...you know, you have to do a comparison, but anyway, that's an issue out there, because...

Mr. Bynum: I'm sorry, can you say that again, what the question is?

Mr. Nitta: The question is whether the existing provisions on the DPs, meaning the 10-lot limit and the one-time subdivision in the open zone, is that a...would that produce a more functional product than what the old bill is proposing. Because the old bill says get rid of that, forget the one-time subdivision, forget the 10-lot limit. One thought on that, and it's just me, you might want to ask others as well, but it's just to put a cap on the density, if you're going to do it, say five houses max in the open zone, like how Imai's bill is saying. But to me, I think overall, the major issue really comes down to function versus development. It's balancing the two. You know, if you just focus on development, you kind of lose sight of what the real purpose of the ag district is and what the open district is, and somehow I think it goes beyond just subdivision standards and density standards. It might come down to permitting, it might come down to better definitions, it might come down to make stronger wording for the open zone, or you know, things of that nature. But really, in my mind, sometimes I felt that the bills were more a reaction to symptoms rather than really the problem itself.

One final word of...I might contradict myself here, but when we were doing the CZO update, one thing that we felt was really important, and which is what Imai's bill does, actually, is that, we said if you can just get the open zone issues out of the way, then you can focus on the main stuff like ag, residential, commercial, you know, whatever else, because the majority of the problems fall into the open zone. But re-thinking that, I think if you do go with something like Imai's bill, I think it's more of a temporary fix, in my opinion. You might have to look at more holistically in the long run.

Mr. Furfaro: Thank you. Keith, thank you for that comment. I'm just going to raise a question. If Imai, you can just give me a yell out here. Is the council still expecting a new CZO bill before the end of the bill? Is he in the audience?

Mr. Aiu: Yes.

Mr. Furfaro: Before the end of the year?

Mr. Aiu: You're speaking of the CZO update.

Mr. Furfaro: The CZO update that's on the planning committee schedule. Will we see a CZO update presented to this council before the end of the year?

Mr. Aiu: Yes.

Mr. Furfaro: Thank you. Okay, any questions of Keith? Go right ahead, Mr. Bynum, and Mr. Kaneshiro, I have to step out for a minute, can I turn this over to you?

Mr. Bynum: Thank you for your presentation and the distinction between regulation and function, and so I just have several questions. One is...well first of all, I'm glad to hear you both addressed PDUs. I think I've shared with you in the past this EPA document about the 10 most important planning issues for rural communities, and I believe there's a whole chapter which basically says restrict the use of PDUs. So both of your comments are consistent with that, and I think that's an example of where around the country there's a growing awareness that that causes problems. Have I got that right?

Mr. Nitta: That's correct.

Mr. Bynum: Okay, and also, one of the bills that was proposed the last term was basically a use bill that said, you know, that any subdivision on ag would be Class IV and there would be some ag standards that the planning commission could use to determine whether the purpose of the subdivision was primarily for ag or if it was primarily for residential subdivision. Is that what you're talking about function that we need that standard that says there's some...at least initially going into a subdivision on ag that it would be motivated by purposes of agriculture.

Mr. Nitta: That's correct, and I direct my comments also to the open zone as well, because you know, the open also has function too.

Mr. Bynum: Right, so...

Mr. Nitta: It's both.

Mr. Bynum: So it's really about addressing use, as opposed to developments. Because I...in my opinion, what was missing from not having the open bill come as part of a package was just that. We're dealing with one problem, but we're not dealing with the overriding issue of use. So I also... I heard your comments about the upcoming CZO is optimistic that the CZO would have addressed some of these function issues. Did I read that correctly, or...

Mr. Nitta: Hopefully it does. I mean that's what it's supposed to do.

Mr. Bynum: Right. Because you know, again I've been trying to do my homework on that and understand the history, but we actually spent money in the 90s on a CZO update that never came. Is that correct?

Mr. Nitta: It never came, but a product did come out of it, and it was... The one that was done in the 90s had a citizens advisory group, and it was a good group of people too, because the group was sophisticated enough to understand what the CZO is about, and that group also expressed concerns what citizens would normally, you know, the type of input you would expect, and a lot of that dealt with function. You know, they said, hey the open zone should function like the open zone, the ag should function like ag, and you know, so forth and so on. But those were, I think, key input from the CAC that was established in the 90s.

Mr. Bynum: So I talked earlier with Dee about...and I think we're talking about the same thing that his bill didn't change the concept that any subdivision on ag would be for agriculture purposes and if that added those definitions in the county law. But our track record of even attempting to enforce...there isn't really a track record of...I mean we all know that a majority of these subdivisions were for residential subdivision purposes with no intention of ag being a motivation at all. It was just an easy way to sub...to get around the subdivision laws and the State land use commission and get a return on investment more quickly. Would you agree with that statement, or...

Mr. Nitta: Somewhat.

Mr. Furfaro: You know, on that note, I would like not to necessarily find ourselves kicking around the areas that we were not successful in, but I also want to point out, in the general plan 5.2.1.e, it indicates that some agricultural land may have been retained for community residential use. It's in that section. It's not real clear, Mr. Bynum, but it is there. And I think we all agree that enforcement, whether it's from planning and/or the building department, is still an issue we need to address in our county.

Mr. Bynum: Thank you. But your comment's really around function versus regulation, is that...at some point we have to address the function, whether it's in a CZO update or in a use kind of bill.

Mr. Nitta: Yeah. Fortunately, unfortunately both go hand-in-hand, but I think the challenge I think everybody faces, you know, administration and legislators, is making the two work together.

Mr. Bynum: Yeah, right. Okay, and I'll close with this question. The general plan also talks about that the ease of subdivision on ag is in essence competition with the urban zone that the urban zone...maybe those are my words, but that's the way I read it, saying that because this is easy to occur, development in the urban zone is stifled.

Mr. Nitta: And that's part of the thing about function again, you know, function versus development. But I think under Dee's leadership with our department, he tried to stress upon, I guess, you know, the staff and everybody else, what is called a level playing field that I mentioned to you folks in my slide presentation, and it's a...yeah, you know, the guy in the urban takes five years before he can put up one house if he starts from scratch, versus the guy in ag can do it in six months, you know. Where's the equity? But yeah, so I think that's a good question...I mean example of function versus development. You want to level the playing field as well.

Mr. Bynum: And I also... Yeah, I appreciate that comment as well, because that would... So that leads a question in my mind...

Mr. Furfaro: I thought you told me we only had one more question, because I'm ready to take a 10:30 break and give some...but go ahead. Question 2, go ahead.

Mr. Bynum: How much ability does the county have to address that issue, what you just said, taking five years to do rezoning, or is that inherent in the State law. You know, can we work on that, can we reform that and make it an easier to do subdivisions, you know, and zoning changes.

Mr. Nitta: No, unfortunately, the way the process is, that's just the way it is, you know. It's because it's a lot of...the whole process involves, as you know, checks and balances, yeah, when you get into that arena, and because of checks and balances, you have to go through the process. So unfortunately, I don't see it improving, realistically.

Mr. Bynum: And I think my last comment would be, the other thing that I...

Mr. Furfaro: The meeting is sunshined for the bills.

Mr. Bynum: I understand.

Mr. Furfaro: The meeting is not sunshined for all of these other particulars, so I just caution members.

Mr. Bynum: The other thing that's changed dramatically since 2002 are the economic realities that these subdivisions on agricultural land did benefit many working class local people in the past, and that, even with the downturn, is no longer the case. The new ag subdivisions, the lot prices, are out of reach of any but the very highest income working class people. And so that would...and with very little happening in the urban zone, we don't get enough product to keep affordable...prices affordable, and we all know what the gap is between median income and affordable housing. So I just want to make those final comments. Thanks.

Mr. Furfaro: Thank you, and I do want to caution you, Mr. Bynum, as what has been sunshined. Theories on economics and marketing and so forth are not posted on the agenda today. Keith, I'm going to ask that we have been one and a half hours through our time. I'm going to ask that we take a 10-minute break. I don't think there's anymore presentations, so councilmembers that are in the audience, when we come back, if you want to come back to your table, that will work, and I would also, since I've given the benefit of time to members who were part of the staff of the county of Kaua'i, and I also know councilwoman Yukimura is here. I will follow some of our council rules, and when we come back, allow councilwoman and former mayor Yukimura eight minutes to make her comments, and then we will go to public testimony. Mr. Nitta, I really appreciate you being here, and if you could stay around after the break, we'll get back at 20 minutes to 11. Thank you.

There being no objections, the Chair called a recess at 10:32 a.m. The workshop was called back to order at 10:45 a.m., and proceeded as follows:

Mr. Furfaro: I want to make a couple more announcements. The intent of this workshop, first of all I want to re-emphasize, is not on making any decisions today. It is just giving some opportunity to talk on the comparisons on the two bills that have been posted for sunshine purposes and additional input. Since Bill 2022 and 2023 have been dormant for some time, we're wanting to make sure that we can look and extract any benefits from the other bills as we move forward on 2339, or are we looking towards, for lack of any other terminology, revisiting a separate ag bill in the future that addresses density. So on that note, I do plan to end the workshop early if we complete testimony, and I will start with former and councilwoman JoAnn Yukimura.

JOANN YUKIMURA: Chair Furfaro and members of the committee, Council, thank you, I was not really expecting the special distinction of having the first crack after all the experts, but...and so I'm not quite prepared like Imai, Keith, or Dee, and haven't given a lot of attention to this bill, actually been too busy on farm worker housing, and yet interestingly it is related. So I first want to say that I

think...I commend you Chair and members of the committee and council for addressing this key issue, and the planning department for initiating 2339, I believe it is, and I also really am grateful for the efforts that were done by Keith and...Dee and Keith back in...I guess it was the 90s...well, when Dee was planning director, yeah. Because obviously, especially when you see these diagrams, you can see what a huge problem it is, and I was looking at the map out on the foyer where you could see how the law's been applied and has really fragmented agricultural lands, basically.

I am in agreement that we need to keep in mind the main purpose here, and that is the preservation and productivity of agricultural lands. So everything we do should be measured against that standard—are we promoting and facilitating good agriculture. I'm thinking agriculture that produces food. Since we are presently ninety percent dependent on outside food, it's a real priority to attain more agriculture sufficiency, and that to me is the underlying goal in the regulation of ag land, and I believe that was the underlying goal when we did our ag subdivision law in the 70s. So when you begin to do that, I think the ideas of reducing density and reducing lots, I think, are commendable, but as we said, there's two parts to this (or who was saying? Keith?), the parameters are (or Dee?) number of lots and number of units.

And the thing that we cannot do is ignore the condominiumization aspect, because you know, in the presentations where we saw five units on a single lot, that is not accurate, because we know that it's going to get condominiumized, and it's going to go into different ownerships, and it's basically being fragmented. So in here where you have five units on one lot, it should be actually five...maybe not... So these subdivision lines, you can figure out a different dot to indicate...a different kind of line to indicate the division, but it's going to be divided. And same thing with down here where it shows...you have here...oh, this is not numbered, shucks. But you have a depiction of original lot divided into one large lot, and one, two, three, four, five, six smaller lots, but each of the six smaller lots have five units, and they're made to look like they're an intact lot. But actually, you should divide...you should put lines in all those...amongst all those units, because they're going to be condominiumized. And so that's what I think is the value of the one unit idea. One unit per lot, which the other counties I think have, and therefore, they haven't had the problems with condominiumization that we've had. The irony is that our original thinkers were intending that those five lots would be farm worker housing. They envisioned an intact lot with five units that were going to...they anticipated that a farmer, a real farmer, would need more than one unit. But then the condo lot...the condo law came into effect as a way actually to subvert our ag law, because one of the principals of ag preservation is you don't fragment the lots. The smaller you make the lots, the more valuable they are as real estate, the higher the per unit price, and the farmers will be priced out of the market. And so that's why the one-time subdivision law works so well, because it allows large parcels to remain.

So that's why I think the one acre...one lot per...one unit per lot is important. And then the work that we're doing with farm worker housing would allow additional units, but only if it's a real farm. And we cannot solve this...well, that's the only way we can address the condo law without addressing the condo law—doing one unit per lot.

And I also want to see the issue about leases is that about four years ago the legislature passed a law that said that you can lease land without affecting the one-time subdivision law. There is...because I was ready to introduce a bill that addressed that, because I knew that that was a key one. But the State actually passed a law, and we need to dig up that law and make sure that it's working well, but it does address the law that was trying to be addressed in 2022 and 2023.

And I just want to say that please don't stop the work you're doing on this bill in waiting for the CZO update, because I don't think that the CZO update has or can address this issue in such detail. It's a very complex issue, and the work that you are doing right now is addressing it much more, I think, realistically and effectively than a broad CZO update attempt. Now maybe what you want to do and in fact is theoretically what going to happen is that this bill which is looking at amending the CZO would be...if the work is continued, because I agree that more work's needed, and I think that the potential is that the two bills, 2039 and 2023/22 could...the good aspects of each might be somehow melded together, and that's going to take a little bit more work. And that while you're doing this work, it might be a time for inserting it into the CZO update, and you'd have to see how they have to be interfaced. But I do believe, especially after working on farm worker housing, that you need a group of both planning people, farm bureau people, former planning directors, and landowners, and now there is...to deal in small meetings with this complex issue and have this really good back and forth and co-educating of each other. That's what I found happened in the farm worker housing, and I think it's been a good model which we can continue to develop as we work on complex bills, whether it's vacation rentals or farm worker housing, you know. So I just want to encourage you to keep this work going. Don't wait until the CZO comes to resume it, or you know, don't defer it until the CZO comes, because I think the CZO has so many other aspects that the consultant, the planning department, and the planning commission have to deal with that...and you're on to something really good by starting the work already.

And then how does this fit with IAL? You know, I think Committee Chair Furfaro mentioned the CZO saying that some purpose of the ag land was for residential and other general purposes...

Mr. Furfaro:

Oh no, I mentioned that in the general plan, not in

the CZO.

Ms. Yukimura: Yeah, oh excuse me, in the general plan. And one of the reasons it says that is because agricultural lands were the leftovers after they determined urban and conservation, basically, and I guess some rural. So it does contain a whole mix of lands, and as I understand it, the purpose of the IAL effort is to identify the ag lands that are so precious and so important for the future food generating capacity of this community that we cannot allow it to go to those other uses, because the world is the market for those other uses, and that's why the prices are so high. Everybody wants a beautiful place to live, and a beautiful place to live is out in the rural areas, and so they'll pay high money that farmers no way can compete with. And so what you want to do is have land that only farmers will compete with, because only farming is allowed. And just designating an IAL is not going to be enough. You're going to have to say what is the definition of farm dwelling, and if it's not a farm dwelling, if it's not a farm, you're going to have to enforce against it, that's the only way to keep ag as ag. So all this work that we're doing on farm worker housing and on open lands that are associated with ag are really important.

So that's how complex this issue is, and you know, when Keith said there's a purpose to open lands, we're going to have to really...my question to Keith as the expert is, what are those legitimate purposes of open land and how do we address those in open in our regulation of open lands. And just initially, my thought is watershed, you know, open spaces, and slope...they're constraint areas where you can't do flat ag farming, you know. And so you know, how do we use those lands. I think in some areas of the country, those open lands are for bees...they're beginning to recognize the ecological value of those non-farm lands, those areas where you're not cultivating crops, but they have other values for agriculture, such as the raising of bees, for example, maybe. And I don't know this area well enough, but I know...I've been reading a little bit about it. So you know, that's what we have to understand when we're regulating all of this.

And there was one more point which I (inaudible) didn't write down, maybe it'll come to me... But that's basically my thoughts on this, and I appreciate the opportunity to share them. Are there any questions?

Mr. Furfaro: Any questions? Thank you very much, JoAnn.

Ms. Yukimura: Thank you.

Mr. Furfaro: I do want to reference the law referring to leases, and I think also how I interpreted Mr. Nitta's question. This references that the principal land that is leased is used for agriculture, but no permanent or temporary dwelling or farm dwelling, including trailers and campers, are constructed on the land area. Keith's dealing with the fact that he may have to finance a return on investment for like fencing and other things. This bill...this law restricts the lease

to the particular period that agriculture was dedicated, but not more than five years. So I don't know if that fits the credit needed. I'm just reading it quickly.

Ms. Yukimura: The law that I heard of was about 10-year leases.

Mr. Furfaro: Well this one references...and we could have 10 year lease on agricultural dedication. It looks like that would supersede it, but it cannot just arbitrarily be more than five years. It's either/or, it seems.

Ms. Yukimura: It's either five years or 10 years?

Mr. Furfaro: It's either five years as the minimum, or the length of your tax...agricultural dedication. It could be 10 years.

Ms. Yukimura: I see. Yeah, okay.

Mr. Furfaro: But we'll look into it.

Ms. Yukimura: Yes. I mean if it doesn't adequately address the concern that was raised, we need to address it because we want to encourage leasing, and I just... I mean that whole issue about... May I say one more...make one more point?

Mr. Furfaro: Yes, go right ahead.

Ms. Yukimura: You know, when I first came into county government in 1976 and my purpose was preservation of ag land, one of my goals, I was a firm believer that you shouldn't allow density on ag land, and that we should do it the European style where the...which is kind of a cluster, but it's a town cluster, which you need to understand is a major thing—that people live in the towns and then they have their lands like almost ahupua'a types...as spokes from the town and people would walk from their house to their lots and fields. And I have changed because farmers have educated me that they kind of need to be on the land, but then it brings up the speculative value of a house on a land, and then it's really slippery slope in terms of how we regulate that.

Mr. Furfaro: Thank you. Members, I just wanted to bring that up as it relates to Keith's thing about farmers being able to cultivate credit. So by farming, you cultivate credit. On that note, I am going to ask if there's members of the public that would like to speak on these bills and any portion of statements made today as it relates to the benefits or the concerns on this bill. And it seems what I'm consistently hearing is bill 2339 might be, and I think I heard this from planning, as well as from Mr. Nitta, it might be something that we want to do short term, but obviously long term. We need to address the density on ag, and hopefully

we'll have something that surfaces that on the new CZO. Barbara, did you want to speak?

BARBARA ROBESON: Yes please. Barbara Robeson for the record. First I just want to say Keith and Dee and Imai are really smart to be able to get these formulas for the clustering and the density and that whole thing. It's pretty amazing. Carl's going to mention some language on the north shore development plan, but one of my main concerns today is protecting the north shore to continue with the language that's in the existing north shore plan ordinance; I don't want to weaken that...and I don't imagine there's many on the north shore that would. And then just a couple of questions and comments kind of thing. I'm wondering how this (and maybe you don't even know the answer today, but) how would these bills or bill fit into the CZO update? Would they be inserted in the CZO update, or would they have to be merged with something in the CZO update, replace...would they just automatically replace, just that kind of procedural question.

Another thing Keith touched on this...the open zone with its constraint districts, and my understanding or observation or whatever experience, it seems like much of the open zone does have a constraint district overlay on it, and I don't know if that's available as part of this discussion, just to have a full amount of information for you folks to make a decision, and whether the GIS staff, who's really good, do they have overlays that they could superimpose on these open districts.

And then finally, as JoAnn mentioned, the IAL and the relationship of these two bills to that. That's all I have. Thank you.

Mr. Furfaro: Thank you. You know, Barbara, I think that's one of the reasons, you know, we have moved on the farm worker housing bill, because obviously that important ag land question, when they lay that template over it, and we're trying to encourage farming, there is a general statement that farm worker housing is allowed. But we're not getting anything in the way of direction from the department of agriculture. So the intent here is to have something in place so at least there's parameters in the beginning, because the goal is to preserve the best agricultural land for farming. I thought your GIS comment was very well, and I thought before you left the mike, you and I were both compliment Mr. Nitta for his comment about the old CZO group that was somewhat sophisticated. Thank you, since Barbara and I were on that committee, we're acknowledging our sophistication.

Ms. Robeson: Thank you Keith. I'm glad that's not on TV.

Mr. Furfaro: I wouldn't have said it if it was on TV. But thank you, Mr. Nitta. Carl, are you coming up to speak next?

CARL IMPARATO: Aloha Councilmembers. I came here primarily to learn at this workshop, but in preparing, did come up with a few ideas or comments that I wanted to present to you. I think there are five of them. One relates to bill 2023, that's the bill that would delete a paragraph from the north shore development plan ordinance, and also a similar paragraph in the Kōloa-Po'ipū-Kalāheo planning area. And that paragraph is the paragraph that says that no parcel that's zoned open shall be subdivided into more than 10 lots, the lots have to be greater than five acres, and they cannot be re-subdivided. That's very important paragraph there, it's a very important provision, and I would...and bill 2023 says, well we don't need that anymore. And since we really don't know what 2022 or 2339 are going to do for sure, because it is so complex, I would urge that rather than delete that paragraph, we preface the paragraph, keep the paragraph and just say, notwithstanding any other provisions in the CZO, these rules continue to stay in force, so at least we do no harm to what's there already. We could also talk about adding a density requirement to that paragraph as well, because as Keith and others have pointed out, it's not only the issue of subdividing, but it's also density because of all the CPR issues that have come up. So that's the first comment.

Mr. Furfaro: Excuse me, Carl. May I ask you, you're reading from bill 2023?

Mr. Imparato: Correct.

Mr. Furfaro: And that section and page number again, please.

Mr. Imparato: I'll give you these comments, but it's actually... What 2023 does is it affects section 10-2.4, d as in dog, one, and there's a similar paragraph in the Kōloa ordinance there. Regarding the other more complex bills, 2022 and 2339, just a few comments. One is that eliminating the open district bonuses as both those bills do is a good thing, but it's only a start. The density of a development in the open district should be less than that in the ag districts, especially because as other people have pointed out, large portions of the open zoned lands, special treatment lands, they're on streams, they're in streams, they're on slopes, and they should be minimally developed or not developed at all. Obviously a lot of detailed work needs to go into determining what the appropriate density is for those things, and that's going to take some time. But I think we have to worry that anything that happens in 2022 and 2339 might paradoxically encourage the development of open zoned lands if we're not careful (unintended consequences), so we really have to look at that issue very carefully.

Third issue is that in regards to clustering concept in 2022, there's a lot of good things about clustering. A clustering may or may not be a good idea, depending on how it's implemented, where the cluster's going to be located, and who gets to make that decision. Because for example, Kaua'i might be better off having

spread out low density development that doesn't obliterate important view planes, a farm dwelling here and there, rather than putting a cluster...a large development cluster in a area that's very sensitive view perspective. So I think the clustering concept needs to be fleshed out a bit more.

The fourth point, and other people have made this, is that the primary objective for any and all of these CZO amendments related to ag land should be to ensure that the development of ag land is strictly related to agricultural uses, such as farm worker housing. This should be the overarching concept that's fully incorporated into any of these bills, and as Keith Nitta said, we need to focus on function and use. So it might be something to the effect of saying...incorporating into these bills something to the effect that as to any new subdivisions, and it's to any new dwellings, they're only going to be approved if they're used for farming purposes. As someone's pointed out, you can't basically say someone was already living on the land. It has to go in to farming. But as to anything new, it's important, I think, to add that kind of functionality.

Clearly, the last point, it's going to take some time to address these issues, and then you have the CZO update and the IAL work that's going on, and Jay's point about breaking up these issues into manageable bite-size chunks is a very good one. I think it's very important to try and take a complex problem and turn it into a series of compound problems, but I would urge you, rather than to say, well let's pass one piece of legislation now and another one later, then maybe as you work on this, break it into chunks, but keep this all as one bill, because the real fear is that people work so hard on one piece of it, and then they're just exhausted, and then nothing happens for five years again. As you've seen 2022 was there for...sitting dormant for seven years now. So I would urge you to think about ways of managing this. For example, one way to deal with this might say that we are going to consider a moratorium on the subdivision of ag and open lands for anything other than clearly delineated farm housing, and during this moratorium period, we will work on these things. That at least puts a fire and a deadline in a sense on people to basically address all of these bite size chunks, rather than saying, well we've had breakfast and we'll worry about lunch in 2019 or something like that. And I don't mean that in any insulting way. It's just that there are so many priorities that come before you guys that I'm worried that these would take too much time. So those are my initial thoughts. I appreciate you're having this meeting today, because it certainly is informative, and I look forward to hearing more. Thank you.

Mr. Furfaro: Carl, I want to thank you. I think for me, I do need to say my thinking is because it is such a broad topic, and since being on the CZO update in the 90s and the general plan, you know, my thinking of addressing these things in more palatable bite-sized pieces is the reason I triggered this workshop, because you know, we have addressed the ADUs, we looking at open density now,

and then we have the farm worker housing bill coming up, and then the true use of the important ag land. And then the last question is what happens to those pieces that are left, you know. I mean it is almost five phases here I think we have to go through, but I appreciate you recognizing my concern. Mr. Bynum had a question for you.

Mr. Bynum: Just that 2339, the way it's written by the planning department, open is more restrictive on smaller lots, and then when it gets to larger lots, there's parity with what's currently on ag, and I appreciate what our committee chair is saying about 2339 could be an interim bill or, you know, for now. It would have been nice if it would have passed in 2000, and just in terms of the history of this, you know, what's great about the public record is there's a public record, and these issues have history and we can read the comments Mr. Crowell and Mr. Nitta made in 2002 and 2001. And you know, basically the idea of a moratorium as explored in 2001, and the council at the time said no, good idea, but no need because we're going to address the CZO quickly. And then in 2002 Mr. Crowell (I think it was 2002) brought this bill (inaudible), but you know, it wasn't passed, right. But in that dialogue there was a lot of discussion about density and use, and some people felt like, oh you deal with this density, that's all you need to do and that will take care of it, and other people felt like no, density is a big part of it, but use is important too. And I heard that reflected here today in comments from Mr. Nitta about function or use. We can look at the regulation and that's important, but you know, a bigger broader look is the use. I think what...your testimony is consistent with that as well. I just wanted to point out that 2339 does at the lower lot end, is more restrictive than ag, and then its parity, because the way it is currently, gets much more liberal on the larger lots.

Mr. Imparato: And on the concerns in...on the north shore is that for the large pieces of land that are zoned open, what will happen, and then my concern is that people get exhausted after 2339 is done, and then we see nothing for five more years.

Mr. Bynum: Right. Well and you understand that, as Mr. Crowell said today, those development plans address the lot size, but when CPRs came in, it didn't address the density. So it means you just have CPRs with more units, but in the long run it's the same thing.

Mr. Imparato: Right, right, so density...

Mr. Bynum: Actually it causes more problems, because instead of just having two neighbors that might encumber your property, you might have 10 or 12, right. So it's pretty complicated, but you know, we can... That's why I say, when I first saw these bills when I first came on council, it took me three or four hours and a lot of questions to get it, but I keep hearing about how complex they

are, and I think when it comes down to it, it gets confusing when you look at the charts, but we all got good brains. So we look at it and we (inaudible), oh I get it, you know. The more tight a cluster, you get a bonus for that, you get additional units, but you preserve more open space. That is a pretty neat concept.

Mr. Furfaro: Carl, thank you very much for your comments today. I would like to have a copy of the testimony you read from. Is anyone here from the farm bureau willing to speak on this bill at this time? No? Mr. Shigemoto?

TOM SHIGEMOTO: Thank you, Jay, for the opportunity to comment and say something about the proposal. You know, I came in halfway into Imai's presentation, and so I'm sorry if, you know, if what I say conflicts with something that he presented that I did not catch. I came here basically because of the...I think it's 2339, which is the open density bonus bill. And when I saw the comparisons with the ag splits and Dee's proposal, I myself got a little bit confused, and I think I kind of figured it out now what's...you know, what the purpose is. I was asking Ian Jung why is 2202 and 2203 mixed in with this whole thing, but I understand that the council wants to resurrect what was proposed before, and to me, to me, I think we're confus...you know, we're melding or trying to combine two different issues. One is amendments to the ag subdivision provisions versus the open zone density bonus issue, and if you so choose to mix the two, well that's your...obviously your choice. I want to say that going back to 1972, you know, I was on the planning...I was working for the planning department when these...when the CZO was adopted and then later on when the subdivision ordinance was adopted. And I will say that I understand why the planning department is, and I'm talking about 2339, why the planning department is trying to get a handle on this open zone density bonus. We...when I say we, Avery Youn and I, when he was planning director and I was the deputy, tried to get a handle on that. Now understand, when the subdivision ordinances and the CZO was adopted, there was no such thing as ag condos. There was not even a concept; nobody thought about that. But anyway, a couple years after the subdivision ordinance was adopted, Avery and I started to receive some problems or perceive some problems with the ag condo provisions, and we came up with some scheme to perhaps re...allow more lots in the ag district. Like for example, you know, lots...original lots 10 acres or less could...you can subdivide it into one-acre pieces, and lots from 10 to 20, you could have four one-acre lots, and the balance in two acres, and then from 20 to 30, four one-acres and the balance in three. We thought of something like this: 10 one-acre lots for the 10 and below, 10 to 20 all two-acre lots, from 20 to 30 all three-acre lots, but limit them to one unit per lot. And we tried to imply or tried to do something about not allowing ag condos, but we came to the council then and we got slammed. We got slammed, and at that point we decided we were barking up the wrong tree, so we dropped the whole notion, and then you know, the current...let the current ordinance dictate what we did or how we calculated that.

So you know, the problems that are facing the planning department today are no different than going back 30 years. There are still the same issues. We still trying to address it, and I commend the planning department for coming up with a proposal to address this. And I certainly understand why and why it's necessary, and I'm not here to, you know, to argue or to oppose that. I did submit testimony previously that I did notice that there is no provisions to grandfather subdivisions that have tentative approvals. A&B has been working on an ag subdivision now for 15 years, and we have tentative approval still ongoing, and if this passes, then we stand to lose a number of lots and some density. So it's, you know, it's selfish perhaps, but it's, you know, that's the truth—we're trying to protect our interest. And after working on something that long, to have something shut down in a shake, then you know, to me, I'm trying to protect that.

The other thing I wanted... I heard the answer from Imai that they are doing the CZO update...hopefully by the end of this year. I first questioned why this 2339 needs to be adopted right away. It's that, you know, it's been going on for so long, if they're doing the update, perhaps that might be a more appropriate time to address amendments like this, but definitely, you know, address it...whether it's together with the rest of the zoning amendments or as a separate item, that's certainly doable. Now taking the ag subdivision laws, I definitely think that should be a separate ordinance in and of itself because of the many different issues, the facets involved with ag subdivisions, that should be a totally separate study. And on top of that, your IAL study (I am on the IAL committee) and we are diligently trying to establish the IAL for the county of Kaua'i. A&B has already done theirs, but I...and I anticipate Grove Farm will, and some of the other landowners will be doing it in due time. But really, when you think about it, the IAL bill, that's a 30-year mandates. Thirty years it took to get this law passed in the legislature. It finally passes. Finally the county's on its way. And then I think the county's agricultural subdivision laws should go hand-in-hand with whatever is decided for for Kaua'i as far as IAL is concerned. This more than anything is going to be the long term solution to protecting important ag lands. And when you think about it, most of the laws today really are aimed at the larger landowners. I think it's not aimed at the person who owns 20, 30, 40, 50 acres; it's aimed at the major landowners.

And let me step away and go back to, you know, when these laws were first introduced or first established. When you look at our current subdivision standards or current subdivision development standards, everything was geared to the large landowner and everything was geared to protect agriculture. Prior to us adopting or prior to the laws being adopted, I don't know if you realize, but a major landowner could have subdivided their lands into three-acre pieces. That was the policy. And the law, the agricultural subdivision law, was aimed specifically at Brewer because Brewer went out of business, and they could have subdivided or submitted an application for three-acre lots all over the entire thousands of acres.

So when the CZO was adopted, it was specifically to address C Brewer situation. Nobody envisioned sugarcane going out of business, or pineapple going out of business. Everybody thought these large land holdings were going on forever, forever, so nobody was concerned about the major landowners. But when you look at the lot splits, why do you think for 300 acres and over you allowed so few lots and a remnant that's supposed to remain for agriculture use in perpetuity.

As far as the densities go, the open zone was never intended to allow this bonus...was never allowed to do it. And then the way it was applied for before was you would not realize the density bonus, but there was a lawsuit and the lawsuit then changed the way that planning department administered the open and the ag...you know, the ag densities. And so that created a lot of problems, but it was never intended to give this...a landowner the density bonus that they realize today.

Anyway, if you ask me, I think the current subdivision laws work. What you're talking about is condominiumization, and that's a State law, so you're going to have to amend the State law before you can, you know, do anything locally, I think, that's my opinion. So unless you can do that, you'll forever have this condominium possibility. If you want to reduce density in the open zone, you know, whether you agree with it or not, at the time the one per five acres or five acre lot minimum in the open zone, that was the standard back then. The commissioners all felt, hey, you know, a landowner should be able to get some value of their lots whether it's in open or not. But as was mentioned already by Keith, by JoAnn, by Barbara, the open zone was designed specifically to recognize constraints and not to encourage development in these open areas, you know. But they, for whatever reason, the commission did allow that one per five. So you can change it, you can make it one per 10, one per 15, but I think what the planning department is proposing is fine. And that's basically all I have to say, and I want to thank you guys for your efforts in addressing this concern.

Mr. Furfaro: Thank you. Tom, let me ask you, this subdivision you mentioned currently has tentative approval.

Mr. Shigemoto: Yes.

Mr. Furfaro: And during your time with the planning commission, was there any thought about I guess kind of getting around this CZO opportunity that piles itself onto the regular laws for subdivisions. Was there ever an either/or discussion? In other words, you can apply for the subdivision or you could apply for CPRing, but you couldn't do both.

Mr. Shigemoto: No. We never considered separating out both. Both were applied, you know, simultaneously or went hand-in-hand.

Mr. Furfaro: Just want to get a piece of history and your perspective there. Mr. Bynum, you had a question?

Mr. Bynum: Thank you for your testimony today, Tom. Just two things. One is we are currently waiting...we have some questions to the county attorney (inaudible), and just speaking for myself, the intention is to allow lots with tentative subdivisions not to be covered by 2339, and I think that always was the intent, and it was appropriate for you to say. It doesn't say that, and so you know, I think there will be amendments to that nature that I hope succeed. Also that your comments about the history of this are totally consistent with what Mr. Nitta has presented with us in the past, and you know, it's a history of people like Avery and yourselves and Dee and others, you know, responding as planners appropriately to changing circumstances. Unfortunately, all of...as you mentioned, it wasn't just A&B and Brewer; it was new landowners came in who sued the county successfully and we haven't modified the regulations to address those where yes, that was the intent, but it ended up being something different because the open density intent was different initially, but it certainly has been used liberally for other intent. So I just wanted to mention that your comments are consistent with presentations we've had from Mr. Nitta.

Mr. Shigemoto: I hope so.

Mr. Bynum: Yes. Thank you very much.

Mr. Shigemoto: Thank you.

Mr. Kaneshiro: Any other questions for Tom Shigemoto? If not, thank you Tom. Anyone else wanting to speak on this workshop? JoAnn.

JOANN YUKIMURA: Thank you. I will make this short, as I've already spoken for a while. Three points. One, touching off of what Tom Shigemoto said about three-acre lots, in fact when C. Brewer went out of business, there was an application or there was soon to be an application for 3,000 three-acre lots in Kilauea, which would have meant a suburban Los Angeles basically. And Ralph Hirota, who was the chair of the council, and that time we had a chairman of the county, rather than a mayor, so he sat as the chair, and the council in one body, but he initiated a moratorium on the subdivision of ag land because the brand new CZO was pending, and it passed, and it saved Kilauea from becoming 3,000 three-acre lots. And then they put into place this ag subdivision law, which we are basically talking about—minimum lot five acres, you know, only so many lots of different sizes, one large remnant piece with no subdivision...resubdivision law. And that's what we've been working with since. That's number one, just a bit of history which might be instructive today.

Number two. You know, a one-acre ag lot is an oxymoron. It really is a residential lot. It is not feasible for commercial ag that's going to produce food for people, and if you talk about economic feasibility, if you look at the farmers who are producing food for our community, they're talking 20 acres, 28 acres for the economies of scale and so forth. You could bring in ag economists. I mean in the trial, I think Dr. (inaudible) or somebody, testified at the economic unfeasibility of three-acre lots back when the moratorium that Mr. Hirota initiated was in effect. And then the idea of road standards is something that we've gone back and forth on. Dee mentioned how we're requiring residential roads in ag subdivisions, which has some advantages, but is also, number one, really raises the cost of developing ag subdivisions. And then when the county takes over and has to maintain miles of ag subdivision roads for three or four houses or...well, now because of our open zone and condominiumization we're actually doing maybe 40 houses, or a hundred houses, depending. But it's still, compared to Molokoa and other residential subdivisions, it's a per capita cost that's really high, and it also raises the price of the ag lot, which makes it harder for farmers to afford. So there's that question of infrastructure, and that's where clustering is helpful, because then you don't have to put a fire hydrant on miles and miles of road, but you only have to put it in one place. So there's a lot of pieces to this when you talk about what's going to be an effective ag subdivision that's going to really promote farming. That's it. Thank you very much.

Mr. Furfaro: Thank you JoAnn. We have a question from Mr. Bynum.

Mr. Bynum: I apologize if it's more of a comment, but...

Mr. Furfaro: I would prefer it to be a question.

Mr. Bynum: Don't you agree that when we...I mean, you know, when Keith and Tom said about the realities on the ground when these things happened, don't you agree we make a mistake when we take current reality and then be critical of past decisions, when the reality was really different. And I know I've been guilty of that, and I think that that's very helpful that Tom and Keith have said, hey, remember where we were at, what was the size of our population, what was the reality on the ground and the mindset at the time when those regulations came into play.

Ms. Yukimura: The place where history is useful is in how much we can learn from it, so that when we craft today's laws, we can do it right. And that's how I think history should be used. And the other thing about reality is we need the people who are on the ground. I mean I have learned so much in this farm worker housing process by talking to the farmers who are out there, and bless their hearts for coming to these meetings over and over, week after week, when they

really need to be out in their fields, but they... You know, like Keith talked about the fencing for goats and the investment, you know, four miles of fencing, that's a lot of fencing and a lot of expense, and these farmers who do organic greens and who do other things and who are really producing food for our people right now, they can tell you the unreality of some of the things that we who are in offices try to construct, and they need to be around the table. We need to talk to them when we're creating these really complex laws that are going to affect them so dramatically, and they can help us make good laws too.

Mr. Bynum: Thank you.

Ms. Yukimura: Thank you.

Mr. Furfaro: Mr. Nitta.

Mr. Nitta: Like JoAnn, I don't want to prolong the meeting, but I just wanted to expand on your question to Tom about the CPRs and subdivisions.

Mr. Furfaro: Right, was that ever considered. Do we want (inaudible)...

Mr. Nitta: Yeah. It was a very...it was a landmark situation, actually. It was done in 1980 by 'Anini Vista in...by Kalihiwai or 'Anini. Anyway, the developer came in and asked for, because it was in a special management area...

Mr. Furfaro: Was that Blackwell?

Mr. Nitta: Blackwell, yeah.

Mr. Furfaro: Blackwell.

Mr. Nitta: I don't want to mention names, but anyway... Because it was on special management area, he came in for a special management area permit, or the SMA permit, and for the planning commission, his proposal was to cut it up into the lots that you see today, but he wanted to HPR. Back in those days they used to call CPRs HPRs, horizontal property regimes. And when he mentioned that I want to do the subdivision and the HPR, the determination from the commission based on the county attorney's office was that an HPR...and if you check in your subdivision ordinance, you'll see that HPRs and leases requires subdivision approval, yeah, from the planning commission. So they considered the HPR as a second time subdivision, so the developer was not allowed to HPR after subdivision, because that would have violated the one-time subdivision rule. So

that was a landmark case, and the planning department held firm to that until (I don't know if you recall in my presentation), but sometime in the mid-80s or late 80s, the department was challenged by an attorney who drafted the CPR laws that, representing his client in Kilauea, that CPRs are not subdivisions, so it should not be counted as one-time...as a subdivision. We showed him the subdivision ordinance and said, no, look, our ordinance says it is a subdivision. But anyway, the short end of the story is that the argument was that CPR is an ownership; it's nothing to do with subdivision. So CPRs can be allowed and not count against the one-time subdivision, but the point I'm making is that yes, a developer did come in at a point in time requesting for a subdivision and a CPR approval...HPR approval.

Mr. Furfaro: I guess though, my question along those lines is, as you know you look at government's role on providing health, wellness, and safety, roads, the ability to extinguish fires, public safety, curbs, parking...all of those things got more complicated when we allowed the subdivision to be topped by the CPR, because the CPR standards don't necessarily address those things with public safety. So I would have thought... You know, you're not telling them you can't do a CPR. What you're telling them, you have a choice to do a CPR or a subdivision, and that was the reason for my question, but it sounds like we battled that one...there was battle on that one.

Mr. Nitta: Yeah.

Mr. Furfaro: Thank you again. Thank you. Is there anyone else that would like to speak before... Mr. Oyama, please come right up.

ROY OYAMA: Well, good morning. I just actually came by to really hear what was going on, and I understand, because it was many years back was, you know, I was farming and I saw the problems, but I didn't have time to come out and do anything about it, especially the days with Ralph Hirota was around. I remember him, because he really had a heart to look at how these issues was about to take place and needed to be protected or guided. So what I wanted to say on our position is I know there is a lot of farmers that don't understand all the rules or the working of all of this issues. I'd like to suggest really a workshop so we can have them around, which can tie in all of this understanding of the worker housing, IAL, CPR... I don't know how in time the council could actually activate some standards that CPR need to be placed in the holding area of how subdivision also is the mechanism works. Because CPR is not a very good thing for agricultural lands that has been CPR'd. We have a...I think you all understand what I'm talking about. We have a specific area and specific CPR issues that has been taking place that is not addressing real agriculture. And the farm bureau position is to really address real agriculture. So I strongly advise that, you know. These bills are in play, that's good, because you need to have standards of the subdivision rules, but I want to see much more done for agriculture itself. That's all I have to say.

Mr. Furfaro: Thank you. You know, Mr. Oyama, I really appreciate that comment. I think... You know, I'm still on this track that these five issues that we've just...from ADUs where we've...on ag land to ultimately the important ag land piece, you know, I'm still of the thinking we need to do it piece by piece, because the bites are big. There was an attempt in 2022 and 2023 to address that when the general plan came out, and this bill went dormant for a while. But it did address the kinds of issues that need to be corrected to meet the citizens' plan. But I think me putting this workshop on today was to get me a clear understanding, should we pursue looking at the open space bill as it was presented by the administration, knowing the CZO is on the horizon, know that we then have an opportunity to look at ag land as it is addressed almost simultaneously with the important ag land bill.

Mr. Oyama: Okay.

Mr. Furfaro: I think I could convince the planning department to make a presentation to your farm bureau that does not necessarily need to be in front of the council. If it as about, you know, understanding the moving parts. We could certainly arrange that, but everybody has to also recognize that anything we do in zoning and so forth, the State can override us. I mean that's unfortunately the challenges we have in homerule. The CPR laws are governed by the State real estate commission. It is a form of ownership. It relates to my question about controlling the kinds of needs with road improvements, firefighting capabilities, police, fire, water that, you know, we certainly have to be able to plead our case. And maybe the way we do it is increment by increment. That might be the best solution right now.

Mr. Oyama: Yeah, I understand. And I think that's the best way to go, but you know, like everything else, everybody else would like to see how you can commingle all this and make it work for the good. But I understand. I know it's very complicated.

Mr. Furfaro: Yeah. I think that's the...if we start with the end in mind, we'll get there. You know, the farm worker housing bill is part of that. You know, how do we now make it affordable for people to actually be in an economic role in farming and producing food. They need some help. They need some help now.

Mr. Oyama: Okay. I got it, yeah.

Mr. Furfaro: It is going to be piece by piece, I think.

Mr. Oyama: But I just want to be sure that, you know, agriculture is always involved with the decisions, because you know, one point I really like to clarify is the cluster housing. I understand yes it's cheap for fire hydrants because it's closer and everything else, but agriculture by itself at this point without housing on each lot, ag theft is a very painful subject, and if you know many farmers, many farmers tell me you would rather quit farming if this going to continue, and we haven't done much about ag theft yet, and that's the biggest issue about the clustering that we believe has to be very carefully decided.

Mr. Furfaro: I agree with you, and I think JoAnn's comment earlier, you know, meeting with the farmers for the last two years for myself, I have a better understanding of, you know, what are the concerns in the farming community, and obviously agricultural theft was one of them. I think they made a very strong point that even if they only got a 600 square foot dorm unit, all of those security controls need to be a little bit spread out on the farm, because...I mean we have people taking cattle, sheep, they also take watermelons, corn, and so forth. You can't just label additional security over your farm as a cost value. So I appreciate those comments.

Mr. Oyama: Yeah, and I thank you too, because I think we need to expose ourselves and make sure we make good government work.

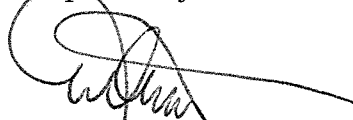
Mr. Furfaro: Thank you.

Mr. Oyama: Thank you.

Mr. Furfaro: Are there any questions for Mr. Oyama? No. Thank you. I want to thank everybody for participating today in this workshop. I thought we had a good overview of what we need to do in the future to...and I'm going to use this word, "manage our direction," and yet at the same time, you know, there's not a lot we can do about the past situation other than try and be fair as we exit from those styles. And I think there was some good questions on that. Dee Crowell, Keith, thank you very much. Mr. Imai, Miles, from the planning department, thank you very much. And on that note, I'm going to go ahead and end this workshop. Thank you very much.

There being no further business, the meeting was adjourned at 11:50 a.m.

Respectfully submitted,



Aida Okasaki
Legislative Services Supervisor

APPROVED at the Committee Meeting held on May 5, 2010:



JAY FURFARO
Chair, Planning Committee